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MEETING OF THE

DISTRICT OF COLUMBIA STATEHOOD
CONSTITUTIONAL CONVENTION

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Tuesday, May 25, 1982

5:20 p.m.

Ninth Floor Auditorium
10th and E Streets, N. W.
Washington, D. C.

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P R O C E E D I N G S

(5:20 p.m.)

CHAIRPERSON FREEMAN: Delegates, we have a quorum. Will everybody be seated.

We will have a moment of silence, please.

(A moment of meditation.)

Delegate Cooper, would you read the roll.

(The Secretary called the roll and the following persons responsed: Delegate Baldwin, here; Delegate Barnes, here; Delegate Blount; Delegate Bruning, here; Delegate Cassell; Delegate Clark; Delegate Coates; Delegate Cooper, present; Delegate Corn, here; Delegate Croft; Delegate Eichhorn; Delegate Feeley, present; Delegate Freeman, here; Delegate Garner, here; Delegate Graham; Delegate Harris, here; Delegate Holmes, here; Delegate Jackson, present; Delegate Johnson, present; Delegate Jones, present; Delegate Jordan, here; Delegate Kameny, here; Delegate Lockridge; Delegate Long, here; Delegate Love, here; Delegate Maguire, here; Delegate Marcus, here; Delegate Charles Mason, here; Delegate Hilda Mason, here; Delegate Brian Moore; Delegate Jerry Moore; Delegate Talmadge Moore, here; Delegate Nahikian, here; Delegate Nixon; Delegate Oulahan, here; Delegate Paramore; Delegate Robinson; Delegate Rothschild,

here; Delegate Schrag, here; Delegate Shelton, present; Delegate Simmons, present; Delegate Street, here; Delegate Terrell, here; Delegate Thomas, here; Delegate Warren; Delegate Blount, present; Delegate Cassell; Delegate Croft; Delegate Coates; Delegate Croft; Delegate Eichhorn; Delegate Graham; Delegate Holmes; Delegate Lockridge; Delegate Hilda Mason, here; Delegate Brian Moore, present; Delegate Jerry Moore; Delegate Nixon; Delegate Paramore; Delegate Robinson; Delegate Warren.)

SECRETARY COOPER: Madam Chair, 32 delegates answered the roll.

CHAIRPERSON FREEMAN: All right, we have a quorum, 32 delegates present.

We were on Section 10 last night. I understand there are two amendments to that section. Is that correct Delegate Mason? Were they submitted to the committee? Who were the two people who had amendments? Delegate Corn. Who was the other person who had an amendment to Section 10?

DELEGATE : I have.

CHAIRPERSON FREEMAN: Thank you. Delegate Corn.

DELEGATE CORN: On line 18, I move to delete the words "or sentence of death."

DELEGATE : I second it.

CHAIRPERSON FREEMAN: Excuse me, could you repeat that, Delegate Corn?

DELEGATE CORN: On Section 10, page 5, line 18, I move to delete the words "or sentence of death."

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that in Section 10, line 18, the phrase "or sentence of death" be deleted. Is there discussion?

DELEGATE CORN: I would like to speak last, please.

CHAIRPERSON FREEMAN: Thank you. Is there discussion? Delegate Cooper.

Excuse me, Delegate Cooper. The meeting is in order. We have an amendment on the floor and one person has the floor right now and that is Delegate Cooper.

DELEGATE COOPER: I would like to speak in favor of the amendment to strike the words "or sentence of death." It is my particular feeling that this should not be imposed in our constitution. I think this is something that should be left to the legislature and should be left even to the courts to decide how severe a sentence should be imposed. I don't think we should be handing down sentences in this constitution. I urge you to vote up the Corn amendment.

CHAIRPERSON FREEMAN: Is there any further

discussion? Delegate Bruning.

DELEGATE BRUNING: Yes, I would like to argue in favor of retaining the wording against the death penalty in there. It is an indication of the state's participation of where we have advanced in the thought of the citizens as far as the death penalty --

CHAIRPERSON FREEMAN: Excuse me, Delegate Bruning. I think we still don't have the full attention of them.

We are on Section 10, delegates, Punishment and the Bill of Rights, on line 18. An amendment has been moved to delete the words "or sentence of death," and we are now debating that.

Delegate Bruning.

DELEGATE BRUNING: The constitution by definition--

CHAIRPERSON FREEMAN: Excuse me, Delegate Bruning, one more time. You will have to use the microphone for the Court Reporter.

DELEGATE BRUNING: I am starting over, I guess.

I want to say that the constitution by the definition reflects the times and the evolution of the state in which they are in. In one of the early constitutions, for example, like Vermont, they had stipulations against slavery and hopefully of the death penalty by the state

constitution is a reflection that the state of Columbia has reached a level that it says no, we do not take human life, we have evolved from that barbaric state, we do not use the power of the state to kill, we understand the importance of incarceration if need be for the protection of the citizens, but we as a state have gone beyond the process of taking an eye for an eye. There is precedence for this in Michigan. I would like us to be, if it isn't in a lot of constitutions, I would like us to be in the forefront of that.

Thank you.

CHAIRPERSON FREEMAN: Delegate Oulahan.

DELEGATE OULAHAN: Madam Chair, this issue does not mean the taking of death before the death sentence. The issue is whether or not the legislature could properly reflect the kind of sentiments that Delegate Bruning just expressed.

I personally am against the death penalty, but I don't think it should be in the constitution. The City Council has already outlawed it, but I think the City Council should be in the position to withdraw that outlawry with respect to one or more classes of criminals if the circumstances should require it. I don't want to put the legislature in that position, therefore I support the amendment.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: Fellow delegates, there are now over one-thousand people in this country awaiting sentence of death. Well over half of those are blacks. The reason they are waiting for sentence of death is because they could not afford to have the kind of high-class lawyer that will get you out of the death penalty. The death penalty depends on the judicial system, the judicial system depends on having money. The people who end up being killed for the most part are poor and in this country they are black. I oppose this and I urge you to vote against the Corn amendment. There is no reason in the world why you should kill people based on the kind of judiciary system that now exists in this country.

Thank you.

CHAIRPERSON FREEMAN: Is there any further discussion? Would the committee like to speak?

DELEGATE KAMENY: First, Delegate Oulahan I think pointed up exactly the issue facing us. The very nature of rights in a constitution, the very nature of putting rights in a constitution is in fact to insulate them from the action of the legislature so that they do not come and go at the whims of the legislature and the politics that affect the legislature, those things which are felt important enough

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to be reserved and placed outside the reach of the legislature.

It was the feeling of the committee -- and there was very, very firmly that it was the committee's intent that the death penalty should be abolished in the District at a constitutional level so that the whims of politics and political change should not affect that, consistent with existing law in the District at this time, and therefore that was the express intent of this provision, so the death penalty in fact could not be invoked at some later date if the legislature changed its mind or if the politics of the day changed.

The committee stands very firmly and strongly behind its decision that the death penalty is not consistent with a civilized society, and urges you therefore to support the committee and vote down the proposed amendment.

Thank you.

CHAIRPERSON FREEMAN: Delegate Talmadge Moore.

DELEGATE T. MOORE: I have just a brief short statement. I believe that the death of --

CHAIRPERSON FREEMAN: Excuse me, Delegate Moore. Could we have quiet in the room?

Delegate Moore.

DELEGATE T. MOORE: I believe that the death of the individual -- and I believe that there is a higher law and

moral obligation that more or less transcends these legal codes, so I would definitely vote against the Corn amendment.

(Applause)

CHAIRPERSON FREEMAN: Delegate Corn, would you like to speak before we bring it to a vote?

DELEGATE CORN: I believe that you should vote up this amendment. It seems to me that the legislature, the courts and even the governor should have more say whether or not the state should or should not have a death penalty than by instituting it constitutionally. It is not a matter of whim, it is a matter of the fact that laws reflect the morals and moorings of a given society. When that society's morals and moorings change sufficiently, the laws of that society should change with them. When a crime is so atrocious, so heinous and offensive to all society, such as the Charles Manson murders and the Son of Sam murderer, it is possible that that society may wish to call the death penalty.

None of us here has been elected to spend the taxpayer's dollars. If you vote down my amendment, you will be committing taxpayer's dollars at the tune of $27,000 per year plus inflation annually to keep people such as Charles Manson and the Son of Sam murderer in prison for life, that could be 40,000 or 50,000 years. My constituents have not given me

that authority. I wonder if yours has. I urge you to vote up my amendment.

CHAIRPERSON FREEMAN: We have had more than two speakers on each side. Is there any further discussion on this issue?

The question has been moved. Is there a second to that?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: All those in favor of closing off debate, please say "aye."

(A chorus of "aye.)

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed. We are voting on the amendment in Section 10, line 18, delete the words "or sentence of death." All in favor of the amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstensions?

(No response)

The amendment is defeated.

Delegate Thomas, you have an amendment to this

section?

DELEGATE THOMAS: I have a clarification amendment, Madam Chairman, on line 20. It says "Convicted persons ahall not be denied legal counsel." As used in this constitution, I want to understand the use of that.

CHAIRPERSON FREEMAN: Would you like the committee to respond to that, Delegate Thomas?

DELEGATE THOMAS: Yes.

CHAIRPERSON FREEMAN: Delegate Kameny?

DELEGATE KAMENY: Delegate Marcus.

CHAIRPERSON FREEMAN: Delegate Marcus.

DELEGATE MARCUS: Good evening, Delegate Thomas.

The intent of the committee there is precisely what that line says, that this constitution enumerates a number of rights. What the intent of the committee and what this language says is, as it has currently been amended, means that prisoners should not be denied rights which in any case except if the granting of those rights somehow negatively affects the security of the penal institution, the safety of the citizens or the safety of the state as a whole, and that was the amendment that we adopted last night.

DELEGATE THOMAS: (inaudible)

DELEGATE MARCUS: Voting rights, that has been

obviated by the language that was adopted in the suffrage article. There are no, as I understand it, voting rights for convicted felons in the state of Columbia.

DELEGATE THOMAS: While they are incarcerated.

DELEGATE MARCUS: While they are incarcerated, yes. There are -- you should understand that persons who have not been convicted or persons who have been convicted of a misdemeanor can in fact vote.

CHAIRPERSON FREEMAN: Delegate Brian Moore.

DELEGATE B. MOORE: (inaudible)

CHAIRPERSON FREEMAN: Please speak up. I cannot hear you.

DELEGATE B. MOORE: A point of information, even though I do not agree with it. I think when you are in the suffrage section, we delayed the voting on the area regarding prisoners rights to vote or not until we came to the rights section, so that has not been addressed.

CHAIRPERSON FREEMAN: Is that correct, Delegate Johnson?

DELEGATE JOHNSON: Yes.

CHAIRPERSON FREEMAN: Could you explain on that?

DELEGATE JOHNSON: (inaudible)

CHAIRPERSON FREEMAN: Excuse me, Delegate Johnson.

I am sure no one can hear you.

DELEGATE JOHNSON: (inaudible)

CHAIRPERSON FREEMAN: Is there any further discussion on Section 10?

DELEGATE THOMAS: Madam Chair, I would like to make a motion to strike line 20 and --

CHAIRPERSON FREEMAN: Excuse me, Delegate Thomas, for a moment. That was debated and an amendment was made last night on exactly that point and it was defeated.

DELEGATE THOMAS: I think there is a conflict between the words in suffrage and the way this is worded and I think it really ought to be taken out.

CHAIRPERSON FREEMAN: I think it probably it will be construed that the two sections are consistent.

Delegate Marcus, did you have something to say for the committee?

DELEGATE MARCUS: No.

CHAIRPERSON FREEMAN: Is there any further discussion on Section 10? Delegate Rothschild.

DELEGATE ROTHSCHILD: I would like to speak against Section 10, Madam Chairperson, for one specific reason. I think today we have a situation now where you have got prisoners in prisons who say I am not going to work unless

you change it. We are paying $27,000 per prisoner to keep them in prison and right now, as we have this worded, we are going to have to pay wages to prisoners to keep the prison going. In other words, they have to be fed by obligation, you have to take care of them. But right now as it is worded it is going to cost the state an awful lot because if you want a prisoner working, you are going to have to pay him wages.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: (inaudible)

CHAIRPERSON FREEMAN: I understand that the committee wants to make one small technical change, is that correct, Delegate Kameny, in Section 10?

Could we have it quiet in this room?

DELEGATE KAMENY: Yes.

CHAIRPERSON FREEMAN: Delegate Kameny, I rule that as out of order because that is a reconsideration of what we debated last night.

Delegate Marcus.

DELEGATE MARCUS: We would like to --

CHAIRPERSON FREEMAN: Could we have it quiet in this room?

DELEGATE MARCUS: We would like to add some

clarifying language, three words to the end of the last sentence, inserting where it now reads "the security of the state and its citizens," to have that read "the security of the penal institution, the state and its citizens."

DELEGATE OULAHAN: (inaudible)

DELEGATE MARCUS: Delegate Oulahan, what it is simply trying to do is specify what people in this body are asking about. I am sure people in this body support the notion that the right of prisoners should be in fact tempered by the security of the penal institution. Now, you can argue that the right of prisoners are tempered by the penal institution by saying simply the state, but we are simply making it more specific. In fact, it is a different substantive -- it is different in substance as it stands now and as it would stand with the inclusion of those three words that I said previously.

The reason why it would be different is because in the past the tempering of the rights of prisoners was done simply within the borders of the penal institution. As it reads now, it is done outside the penal institution, so I would move that as an amendment on the part of the committee as clarifying language.

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: Discussion? Delegate Bruning and then Barnes.

DELEGATE BRUNING: (inaudible)

CHAIRPERSON FREEMAN: Excuse me. Delegate Bruning, you are going to have to use the microphone when you speak. Delegates, there is a constant dull roar in this room.

DELEGATE BRUNING: The question that I understand --

CHAIRPERSON FREEMAN: Excuse me, Delegate Bruning. Really, if you need to talk, would you please whisper. You have no idea how noisy it is.

DELEGATE BRUNING: I am simply asking that last line, you are including the words "penal institution." Is that also inclusive of the language that was understood last night, to have people out on probation still under certain restraints?

DELEGATE MARCUS: Yes. Yes, it is simply clarifying language.

DELEGATE BRUNING: Thank you.

CHAIRPERSON FREEMAN: Delegate Barnes.

DELEGATE BARNES: Yes, I would like to hear from the legal counsel as to exactly what the legal affects may be.

CHAIRPERSON FREEMAN: Mr. Thomas.

MR. THOMAS: I think that the legal effect would be exactly as Mr. Marcus stated. I think the purpose of this section in the first place was to first of all not deny any rights to convicted persons specified in this constitution. However, it wanted to temper those rights against the security of the institutions. If those rights were to have affected the security of the penal institution, then such rights would have to be, of course, abrogated to some extent. But the new language, the state and its citizens, it takes the intent of this sentence out of the institutions and makes it statewide or expands the intent. So I think that putting "penal institution" into the language at least preserves some of the original meaning of the sentence.

DELEGATE BARNES: I'm sorry, does this now narrow the scope of this or does it broaden the scope of it? It already says "the state and its citizens," but inserting the words "penal institution," does it make it narrow or is that making it broader than it is as it is?

MR. THOMAS: I think that makes it more clear, the intent and I don't think that leaving those words out would matter.

CHAIRPERSON FREEMAN: Is there any further --

DELEGATE BARNES: Does it make it broader, narrower,

or the same but clearer?

MR. THOMAS: Somewhere between the same but clearer and different but clearer. I think it is the same but clearer. I think that someone could read more into it, of course, but I believe that the section would be read to mean either that a convicted person will be given his rights except when it affects the security of the institution or the state and the citizens. The other language, I think it will be implied to read or interpreted to read if a person is on parole or probation. I don't see where -- as it stands right now, it means the rights of convicted persons can be affected for the rest of his life, if it affects the security of the state or its citizens.

DELEGATE BARNES: Do you think the new langauge means that is not the case?

MR. THOMAS: No, I do not. I am saying that it makes more clear the intent that convicted persons who are in prison or convicted persons who are still a part of the judicial process, meaning people on parole or on probation.

CHAIRPERSON FREEMAN: Are there any further questions to our general counsel?

MR. THOMAS: Is that clear?

CHAIRPERSON FREEMAN: Delegate Baldwin.

DELEGATE BALDWIN: I wouldn't say it clears it up, number one. I want to speak parliamentarily and also whether or not it clears it up. Last night this body decided -- not that I am in opposition, I just want to say what we did and what is on the record -- last night the majority present and voting decided to delete the security of the penal institution, you may recall, for whatever reason. I wasn't one of those that voted for it, but that is what we did. Then we had an amendment and the amendment says "the state and its citizen" which is all inclusive, including penal institutions. That is implied.

Now, if you come back and say now we are going to reinsert penal institutions, for whatever reason the committee has, they are in fact reconsidering the past action that was taken. Again I am not opposed to it, but I am just saying that we have to understand exactly what we are doing. So number one, the committee -- and I have an amendment before the committee -- we are now restating something that was voted down. Today we can in fact -- there again, if you want to also include penal institutions, we spent 48 minutes last night discussing this same manner and it appears we will spend an equal amount of time today. It is just a matter of us deciding on exactly how we want it worded.

If we want it worded -- if we want to include penal institutions, we do that and we vote to approve it, but it is not that it is clearing up anything. It isn't clearing up anything because when you say "the state and its citizens," you were at that time talking about it, but for some reason you wanted last night to delete "penal institutions" and now today you want to reinsert it, put it back in.

CHAIRPERSON FREEMAN: Delegate Barnes.

DELEGATE BARNES: Point of information. Exactly what is on the floor? What is the language, et cetera?

CHAIRPERSON FREEMAN: What is on the floor, as I understand it, is on line 22, to put in the words "a penal institution," and then the language that we adopted last night, "the state and its citizens."

DELEGATE BARNES: Could you read the entire language that we adopted last night?

CHAIRPERSON FREEMAN: We adopted it last night, the last sentence of Section 10 reads, "Convicted persons shall not be denied any rights specified in the Constitution except only as shall be reasonably necessary for the security of the state and its citizens."

Delegate Bruning.

DELEGATE BRUNING: I call for the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: The question has been called and seconded. Delegate Rothschild.

DELEGATE ROTHSCHILD: A point of information. I think it is "reasonably necessary" --

CHAIRPERSON FREEMAN: Excuse me, I didn't hear you, Delegate Rothschild.

DELEGATE ROTHSCHILD: Did you read on line 22 "reasonably necessary."

CHAIRPERSON FREEMAN: I didn't. Is that what we adopted?

DELEGATE ROTHSCHILD: Yes.

CHAIRPERSON FREEMAN: Thank you.

All those in favor of closing debate on the amendment, on the Marcus amendment, please say "aye."

(A chorus of "aye.)

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed. I will reread it as it would read with the amendment: "Convicted persons shall not be denied any rights specified in the Constitution except only as shall be reasonably necessary for the security of the penal institution, the state and its citizens."

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All those in favor of the amendment as read, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

Abstensions?

(No response)

The amendment carries. Is there further discussion on Section 10? Delegate Garner.

DELEGATE GARNER: I have an amendment at the desk which I believe clarifies that. It should read "Convicted persons currently" -- "Except as provided in Article (blank)," the article on suffrage, "convicted persons currently serving a term shall not be denied his rights." I don't believe it is the intent of the committee or this convention to deny people who have been convicted one time but are no longer serving their term any rights at all, and that is what this language implies. I don't think we intended that and I believe it is clarifying language.

CHAIRPERSON FREEMAN: Would you repeat that one more time.

DELEGATE GARNER: "Except as provided in Article (blank)" -- which is the article on suffrage -- "convicted

persons currently serving a term shall not be denied any rights specified in this constitution."

CHAIRPERSON FREEMAN: It has been moved and seconded that we amend lines 20 and 21. Is there discussion? Delegate Long.

DELEGATE LONG: I speak from a great deal of -- s I remember the discussion last night by Delegate Clark, he seemed to be saying that the language as it stands dealt with the question of people who are on parole, having certain restrictions on their freedom. Now, it sounds like that has been wiped out because the language only goes to those people who are currently in prison.

CHAIRPERSON FREEMAN: Would the maker of the motion like to clarify that intent?

DELEGATE LONG: I did not say incarcerated, I said serving a term.

DELEGATE GARNER: If you are behind the wall, you are serving a term. If you are on probation, you are serving a term.

DELEGATE LONG: Thank you.

CHAIRPERSON FREEMAN: Delegate Baldwin.

DELEGATE BALDWIN: No.

CHAIRPERSON FREEMAN: Is there any further discussion

on the amendment? Delegate Kameny.

DELEGATE KAMENY: The committee will accept that amendment if that is procedurally in order.

CHAIRPERSON FREEMAN: Thank you. Is there any further discussion on the Garner amendment? May we vote on it? Mr. Thomas.

MR. THOMAS: It seems to me if you are going to accept -- if you are going to say accept for suffrage, then you might have to say accept for involuntary servitude, too, which is also a right that you could guarantee. It is just a question I bring up. Do you have a response?

DELEGATE KAMENY: What he is referring is a specific denial of a right and that is the only exception. You have it reversed 180 degrees.

CHAIRPERSON FREEMAN: We could debate that if we adopt this amendment. Is there any further discussion on this amendment?

I will read it one more time. Who had a point of information? Delegate Jordan. Delegate Moore.

DELEGATE T. MOORE: Is there anyone in the house who can put this in specific information so that we can understand it and the voters out there will understand it when they read it. I am confused with all these changes and I really don't

understand it, this particular section. I wonder if someone can do that in this hall.

CHAIRPERSON FREEMAN: Are you asking for an explanation or are you asking for a reprint of where we are at right now?

DELEGATE T. MOORE: (inaudible)

CHAIRPERSON FREEMAN: We cannot hear you. We are sorry. It is extremely noisy in this room.

DELEGATE T. MOORE: I am asking for an understanding of the article, the last two lines. It seems to me it is confusing and if we can't understand it here, the readers of the constitution will have doubts about it.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: Let me try to set it out for you. I am going to build a structure step by step, so don't say anything when I first say it until we give it some depth. All right. It was the committee's view and the intent here that step one, a person who has been convicted shall not be denied any rights. Now, first, however, if he is put in prison then obviously he is denied his liberty. He is denied that, but he is not denied any further rights and no rights when he gets out.

However, you have to be unjust denying him his

liberty, you also have to put further restraints to maintain the security of the institution in which he is located, so we have denied him those rights for the security of the penal institution.

Additionally, under the amendment last night, he can be denied rights which are necessary outside prisons if he would be a danger to the general community. So that is what it says, except only for one addition that comes from the article on suffrage, which says besides all these other things, if he is in prison for a felony he also may not vote.

I hope I have made it somewhat clearer.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: It appears to me that in the part of this you have defeated what was the original committee intent, and we need to own up to it and say that we do not wish to have people who are incarcerated or who have formerly been incarcerated to have any rights, and if so I think the language ought to be clear in that regard. When we get through modifying it and complicating it, the intent of the committee will be diffused and the intent of those of us who wish to look on this as a rehabilitation process will not be provided for this constitution with the rights, and I believe that while some of us are well intending, I think we need to

look at every word of this sentence, and I think that it is possible to make the sentence clear. And I say to the delegates, it is perfectly clear that it is complicated and when we get through with it we will not know what we have passed, and I urge the committee to try again to put in the necessary modifications in the proper place so that the intent is clear. We are looking for your guidance and you seem to be contrary.

(1-B)

CHAIRPERSON FREEMAN: I understand that the committee did accept the Garner amendment, so to that extent they are providing guidance for us.

Delegate Long, you had your hand up --

DELEGATE SHELTON: Read it again, please.

CHAIRPERSON FREEMAN: I will. We obviously are not voting on it right now, but I will read it again. It starts on line 20 and it will read as follows: "Except as provided in Article (blank)" -- which refers to the suffrage article -- "convicted persons currently serving a term shall not be denied any rights specified in this constitution except only as shall be reasonably necessary for the security of the penal institution, the state and its citizens."

DELEGATE SHELTON: "Except only."

CHAIRPERSON FREEMAN: "Except only," yes, as it is

written in the article.

DELEGATE SHELTON: What is the word after "convicted persons"?

CHAIRPERSON FREEMAN: Shall I read it one more time?

DELEGATE SHELTON: Yes.

CHAIRPERSON FREEMAN: Okay. This is incorporating the Garner amendment which we have not yet voted on: "Except as provided in Article (blank), convicted persons currently serving a term shall not be denied any rights specified in this constitution except only as shall be reasonably necessary for the security of the penal institution, the state and its citizens."

Delegate Long.

DELEGATE LONG: I think part of the confusion is that we have two clauses in here saying "except."

CHAIRPERSON FREEMAN: Thank you. Delegate Thomas, did you wish to speak?

DELEGATE THOMAS: When a person who goes out here and sticks up a bank or shoots somebody, we have not denied him anything. He denies himself the right, and I just want to make that clear.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: I would just like to ask a

question about the effect of the Garner amendment. As Delegate Garner defines "currently serving a term," that would mean that someone who has been released from the penal institution and on parole could not exercise the right to vote, is that correct?

CHAIRPERSON FREEMAN: That is not correct. Delegate Garner, would you like to explain it one more time?

DELEGATE GARNER: The suffrage article says that he may be denied the right to vote when he is convicted of a felony and if he is convicted of a crime in any state in which the felony of the state of (blank). Only when you are incarcerated are you denied the right to vote. That is what that says.

The purpose of the Bill of Rights is to protect minorities. There is in no society a more heinous group of people than the ones who have purposely been put behind bars. The purpose of this sectionis to protect those rights of the people we hate the most, and we ought to be careful and make sure we do that and that is the purpose, and the committee's section as amended I believe does that very well, as well as protecting the rights of those who are not currently incarcerated.

CHAIRPERSON FREEMAN: Delegate Mason.

DELEGATE H. MASON: I would like to get this straight. Are we protecting the rights of everybody? Well, this record just shows that we are protecting the rights of the people we hate and I thought we were protecting everybody.

DELEGATE JACKSON: We are, madam. We are.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: First of all, I thought we were setting the record straight. I think those of us who are decision makers and leaders in this community need to understand that there are some people who are incarcerated who are the victims of an inadequate legal system that cannot enable them to provide them with adequate legal protection and representation.

And what we are saying, we are not talking about -- and I think it is important not to be emotional on these concerns -- we are not always talking about the stickup man who goes out and sticks someone up. We are talking about also political prisoners, we are talking about people who are economic victims, we are talking about a whole range of people who are in this community, and I urge those of us who, after you get through considering the rights and the security of the penal institution, the security of the citizens and the security of the state -- I don't know who else would be

eliminated in such a broad category, and that is why I am saying that we should totally eliminate that concept if we are not interested, because everybody is a citizen. Everybody is a member of the state and the penal institution security, of course, is very important. So I am saying we need to be clear and say that we are not -- we are denying the rights to those who are incarcerated and be clear on that and end it at that particular point. I am uring therefore that we vote against this, what is supposed to be a clarification but in essence gives a disturbance to the committee's report.

CHAIRPERSON FREEMAN: Delegate Bruning.

DELEGATE BRUNING: I move the previous question.

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on the Garner amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed, and I will readit one more time for the record. The Garner amendment incorporated in the last sentence of Section 10, would read as follows: "Except as provided in Article (blank), convicted persons

currently serving a term shall not be denied any rights specified in this constitution except as only shall be reasonably necessary for the security of the penal institution, the state and its citizens."

All those in favor of the Garner amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: I will have a hand vote on that. All those in favor of the Garner amendment, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 9.

CHAIRPERSON FREEMAN: All those opposed, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 17.

CHAIRPERSON FREEMAN: Abstensions.

SECRETARY COOPER: 6.

CHAIRPERSON FREEMAN: The Garner amendment is defeated.

Is there further discussion on Section 10? Delegate

Love.

DELEGATE LOVE: I have an amendment.

CHAIRPERSON FREEMAN: Would you like to read it?

DELEGATE LOVE: This is a substitute for the second sentence in the section also because I am fairly nervous about based on the principle of reformation, it doesn't mean a whole lot to me and also there is very little evidence to show that prisons reform people.

CHAIRPERSON FREEMAN: Present your amendment first and then speak to it.

DELEGATE LOVE: I will present the motion. The second sentence would read, if my amendment is accepted, "Penal institutions shall be operated with the objective of restoring the offender to a useful role in community life."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : Would you repeat that?

CHAIRPERSON FREEMAN: Would you please repeat it, Delegate Love?

DELEGATE LOVE: Penal institutions shall be operated with the objective of restoring the offender to a useful role in community life.

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we substitute the second sentence in Section 10 with the following: "Penal institutions shall be operated with the objective of restoring the offender to a useful role in community life."

DELEGATE CORN: Point of order.

CHAIRPERSON FREEMAN: Is there discussion on that?

DELEGATE CORN: Point of order.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: It seems to me that is simply style in drafting change. I mean that is just clarifying language of what is meant, but that is style in drafting.

DELEGATE LOVE: No, it isn't.

DELEGATE CORN: I don't see any substantive difference.

CHAIRPERSON FREEMAN: I am going to rule that it is a substantive change. Is there discussion? Would you like to reserve your right to speak at the end, Delegate Love, or do you want to speak now?

DELEGATE LOVE: At the end.

CHAIRPERSON FREEMAN: All right. Delegate Oulahan.

DELEGATE OULAHAN: I wonder if Mr. Love would accept an amendment to his amendment which would add at the

end "consistent with the interests of the community."

CHAIRPERSON FREEMAN: "Consistent with" what, Delegate Oulahan?

DELEGATE OULAHAN: "Consistent with the interests of the community." Mr. Love?

DELEGATE LOVE: I think "useful role" means clearly consistent with.

DELEGATE OULAHAN: Then may I ask, Madam Chairman, Mr. Love if his amendment includes adequate -- if his amendment would permit no return to the community if the individual involved could not be reformed? In other words, I also want to protect the interests of the community here which may not rise in reformation of the specific individual.

CHAIRPERSON FREEMAN: Would you like to respond to the question, Delegate Love?

DELEGATE LOVE: It says "operated with the objective," it doesn't mean it will necessarily achieve that objective.

DELEGATE OULAHAN: Thank you.

CHAIRPERSON FREEMAN: Delegate Harris.

DELEGATE HARRIS: I would like to urge delegates to vote against the amendment. I don't think it is clear. All it says is that penal institutions shall be operated with the objective to -- is it to a useful life? -- shall be operated

with the objective of restoring the offender to a useful role in the community. I don't think it is clear enough. I think it is very vague. I think that the language here of the committee, number one, deals with the principle of reformation, and I think that that is important in restoring, in moving the prisoner or the offender from the institution to the community. I think we have to have a program, an organized program within the institution, and I think the language of the committee does do that, and I urge you not to vote for the Love amendment.

CHAIRPERSON FREEMAN: Delegate Street.

DELEGATE STREET: I am opposed to the Love amendment At the risk of being redundant, I concur with what Delegate Harris has just said. Lines 18, 19 and 20 speak to that point of reformation and I think the Love amendment would be redundant in this particular section.

CHAIRPERSON FREEMAN: I would point out that this is a substitute sentence, not to be followed after the sentence that is there. This is a substitute sentence.

Would the committee like to respond?

DELEGATE MARCUS: No, we would like to call for the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: All those who are in favor of closing debate on the Love amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed on the Love amendment, which would substitute the second sentence in Section 10 with the following: "Penal institutions shall be operated with the objective of restoring the offender to a useful role in community life."

Delegate Love?

DELEGATE LOVE: I feel many people are in prison for simple reasons like they can't read or write and can't get a job and somehow this suggest you put people in prison and you try and convince them that they are wrong and you send them to church. My feeling is you educate them and you prepare them to come back into the community and be a useful person. I want the prisons to return people who are useful to the community and not to have them reform in terms of some moral system, so I would like to just stand with the language I have. I don't even know what "reformation" means. It makes me nervous, because I don't think that is what we are talking about. I think we are talking about educating people,

giving them skills and returning them to the community so they can have a useful function in the community.

CHAIRPERSON FREEMAN: We have had the maker of the motion speak. We are now ready to vote on the amendment. May I have your attention please, so you are not confused when you vote. All those who are in favor of adopting the Love amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstensions?

(No response)

The Love amendment is defeated.

Is there any further discussion on Section 10?

DELEGATE T. MOORE: Madam Chair --

CHAIRPERSON FREEMAN: I would like to see a hand.

Delegate Talmadge Moore.

DELEGATE T. MOORE: I think we failed in our action on the same type of section last night and it appears that we are going to do the same thing tonight and therefore I call for the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded

that we close debate on Section 10. All those in favor, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: We are now voting on Section 10. All those in favor of adopting Section 10 as it has been amended, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

"A chorus of "nay.")

CHAIRPERSON FREEMAN: I am going to call for a division. All those in favor of adopting Section 10, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 26.

CHAIRPERSON FREEMAN: All those opposed, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 5.

CHAIRPERSON FREEMAN: Abstensions?

(A show of hands.)

SECRETARY COOPER: 2.

CHAIRPERSON FREEMAN: Section 10 is adopted.

Now, I will point out to you that when I called for a voice vote on that, it was very hard to distinguish between the yeses and the noes. We found it about equal, and yet the vote was 26 in favor. So if you want something, please speak up.

Delegate Kameny.

DELEGATE KAMENY: Thank you, Madam Chair. I am rising to a brief point of personal privilege. I seem to be the delegate who endlessly gets things lost or taken. As you know, when we adjourned last night it was five to 11:00, in great haste, and I found today that a stack of my papers having to do with my work on the Committee on Style and Drafting had apparently probably been inadvertently and accidentally taken by another delegate. May I ask that you --

DELEGATE SHELTON: I have them with mine.

DELEGATE KAMENY: Oh, you don't know how relieved I am. I've been wandering all over the city in different places looking for that. Thank you.

CHAIRPERSON FREEMAN: Delegate Kameny, is your committee now ready to present Section 7 again? Section 7, because we never adopted Section 7 last night.

DELEGATE KAMENY: The committee was asked to go back

and consult and possibly reformulate. That was the one on the grand jury, and we have essentially done so.

DELEGATE : Can we move on to another section and then we will come back to this?

CHAIRPERSON FREEMAN: The committee is not quite ready, delegates, on Section 7, so we will move on to Section 11.

Delegate Moore, you are now --

DELEGATE J. MOORE: I move that we adopt Section 11.

DELEGATE MARCUS: I second.

CHAIRPERSON FREEMAN: I didn't hear it moved.

DELEGATE J. MOORE: I move that we adopt Section 11, Ban Against Imprisonment for Death. No person shall be in prison for the inability to pay a debt. I so move.

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE MARCUS: I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we adopt Section 11. Is there discussion on that? Delegate Oulahan.

DELEGATE OULAHAN: Madam Chair, I have a question of the committee. Does this section prevent a parent who had failed to pay alimony or support, whether a man or woman, to be jailed for contempt? As I understand it, such a person

could not be placed in jail for failure to make payment per se, but I want to make sure does it also restrict the right of the family relations judge to hold such a marriage partner in contempt for failure to pay.

CHAIRPERSON FREEMAN: Do you want to respond to that for the committee?

DELEGATE KAMENY: Delegate Oulahan did not read the committee's report. It says in relevant part, "This section does not prevent imprisonment of those guilty of wilfully not making child support payments which arise from contempt of court proceedings," and that covers similar situations and that answers you with precision.

DELEGATE OULAHAN: It does not answer my question, because of the literal language which is used in Section 11 and secondly it does not cover the issue of alimony, whether it is payable by a husband or a wife. It just says child support payments. It is in alimony, not child support payments, that it arises. I read Section 11 to outlaw any kind of imprisonment against a parent or husband or wife who fails to bey the orders of the family relations court when it comes to alimony and child support payments, because there is just an absolute prohibition.

CHAIRPERSON FREEMAN: I will ask the committee to

try to answer your question one more time. Delegate Marcus.

DELEGATE MARCUS: Delegate Oulahan knows quite well that there is a difference between contempt of court and not paying a debt. Mr. Oulahan, in his sophistry, understands --

DELEGATE LOVE: Point of order.

CHAIRPERSON FREEMAN: Delegate Marcus --

DELEGATE MARCUS: Delegate Oulahan --

CHAIRPERSON FREEMAN: Delegate Marcus --

DELEGATE MARCUS: I am trying to answer his question.

CHAIRPERSON FREEMAN: There is a point of order on the floor.

Delegate Love, what is your point of order?

DELEGATE LOVE: My point of order is you do not use a delegate's name in debate and you certainly do not use adjectives around a delegate's name. You speak to the Chair.

CHAIRPERSON FREEMAN: That is a very good point of order.

DELEGATE MARCUS: I was answering Delegate Oulahan's question.

CHAIRPERSON FREEMAN: I think you understand the intent of the point of order, Delegate Marcus.

DELEGATE MARCUS: Mr. Oulahan, the answer to your question is that when an individual is punished for not making

alimony payments, not making child support payments, that that individual is being punished for contempt of court not for not making that particular payment. I think that this body should understand that there is a clear difference between the two, that there is nothing in this language which would prevent that, that similar language exists in the states of Alabama, California, Arizona, Arkansas, Alaska, Colorado, Florida, Georgia, Hawaii, and approximately 20 to 26 states surveyed, and that in none of those states is the jailing of an individual for failing to make child support payments or alimony prohibited by this language.

CHAIRPERSON FREEMAN: Okay. I have in this order Delegates Jordan, Robinson, Bruning, and Corn. Delegate Jordan.

DELEGATE JORDAN: I wish to offer a substitute.

CHAIRPERSON FREEMAN: Would you read it, please?

DELEGATE JORDAN: Yes. It says "Provision to individuals of a reasonable degree of protection against violent crime against persons and property is an obligation of the state."

DELEGATE CORN: Point of order. Point of order. That is not germane.

CHAIRPERSON FREEMAN: Delegate Jordan, I am going

to ask you to move that as a new section after we finish Section 11. It is not germane to Section 11.

DELEGATE JORDAN: Will you recognize me at that time?

CHAIRPERSON FREEMAN: Yes, I will. Delegate Robinson.

DELEGATE ROBINSON: Madam Chair, I have passed on to the committee --

CHAIRPERSON FREEMAN: Excuse me, Delegate Robinson.

DELEGATE JACKSON: Point of order. Point of order.

CHAIRPERSON FREEMAN: I will call on you, Delegate Jackson.

DELEGATE JACKSON: Thank you.

DELEGATE ROBINSON: Madam Chair --

CHAIRPERSON FREEMAN: Delegate Robinson.

DELEGATE ROBINSON: Do I still have the floor?

CHAIRPERSON FREEMAN: Yes.

DELEGATE ROBINSON: As I said, I have passed on to the amendments desk an amendment that I propose to move to Section 11, line 3, immediately after the word "debt" to add the following words: "This section does not prohibit simple arrest of absconding debtors." It also --

CHAIRPERSON FREEMAN: Delegate Robinson, would you

repeat your amendment?

DELEGATE ROBINSON: The amendment reads as follows: Immediately after the word "debt" on line 3, "This section does not prohibit civil arrests of absconding debtors."

CHAIRPERSON FREEMAN: Is there a second on this amendment?

DELEGATE ROBINSON: And I want to say, Madam Chair, that I reserve the right to speak last.

CHAIRPERSON FREEMAN: Did I hear a second?

DELEGATE THOMAS: I second it.

CHAIRPERSON FREEMAN: Delegate Thomas has seconded it. It has been moved and seconded that we amend Section 11. Is there discussion on that amendment?

DELEGATE JACKSON: Since it is unclear, I would ask that he speak to it before because we don't know what the devil he is talking about.

CHAIRPERSON FREEMAN: I think that Delegate Robinson -- excuse me, can we have order in the hall -- Delegate Robinson can explain his amendment now, he can speak for it at the end if he chooses to.

DELEGATE ROBINSON: The sentence that I have moved to amend in Section 11 is to in a sense place some life or to add more to the area of child support, child care and

alimony. The phrase "This does not prohibit civil arrests of absconding debtors" I believe will cover those persons.

DELEGATE JACKSON: I still don't know what he is talking about. With no offense, I don't know what he is talking about.

CHAIRPERSON FREEMAN: Would you like to ask the general counsel to explain your amendment?

DELEGATE JACKSON: I will try one more time. I say that this amendment I believe will address the problem of alimony, child support from absconding from their responsibilities --

DELEGATE JACKSON: I still don't understand.

CHAIRPERSON FREEMAN: Is there debate on this amendment? Delegate Kameny, would you like to speak for the committee?

DELEGATE KAMENY: I would like to make one point --

CHAIRPERSON FREEMAN: Excuse me, Delegate Kameny. It is getting chaotic again in this room.

DELEGATE KAMENY: Use your gavel. Use your gavel.

CHAIRPERSON FREEMAN: I am Chairman of this convetion, Delegate Kameny. Can we have quiet in this room? One person has the floor at a time. There is a constant dull roar. It is impossible to hear.

DELEGATE KAMENY: I merely want to make one clarifying point which people looking at this all seem to miss, and that is, as simple as the language is, they omit noting one word, "no person shall be in prison for the inability to pay a debt." It does not cover over circumstances -- "in prison for inability," not refusal, not contempt of court, not absconding, those all remain within the reach of the law and imprisonment, for inability to pay a debt. This proposal is very sharply limited and I suggest that in proposing amendments, in considering it and in voting on it, you keep in mind what it actually says and also what it does not say.

CHAIRPERSON FREEMAN: Delegate Baldwin.

DELEGATE BALDWIN: Strike my name.

CHAIRPERSON FREEMAN: Okay. Delegate Bruning.

DELEGATE BRUNING: I call for the question.

DELEGATE JACKSON: Point of order, Madam Chair.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: (inaudible)

CHAIRPERSON FREEMAN: Thank you. Mr. Thomas.

MR. THOMAS: I think the amendment is concerned with people not paying alimony or child support. I don't think that that is prohibited from this section. A person who is arrested or jailed for not paying alimony or child

support is like Mr. Marcus says, he is jailed for contempt of court, not his inability to pay the debt. So I think that this section does not prohibit parent standing.

DELEGATE CORN: I have a question.

MR. THOMAS: Yes.

DELEGATE CORN: What about someone who doesn't pay taxes, they made a lot of money and --

CHAIRPERSON FREEMAN: Delegate Corn --

DELEGATE CORN: -- they have no money left and they do not pay their taxes. Would this language by the committee cover there?

CHAIRPERSON FREEMAN: Delegate Corn, it is not germane to the amendment. That question is not germane.

It was moved and seconded that we close debate on this amendment. I point out that Delegate Robinson still has an opportunity to speak, but we will vote on this first. All those who are in favor of closing debate on the Robinson amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed. Delegate Robinson.

DELEGATE ROBINSON: Madam President, since the body

appears to be confused as to the intent of the amendment, I hereby withdraw the amendment.

CHAIRPERSON FREEMAN: The amendment is withdrawn.

Is there further discussion on Section 11? Delegate Bruning.

DELEGATE BRUNING: I move the question on Section 11.

DELEGATE J. MOORE: I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on Section 11. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

Debate is now closed. All those in favor of adopting Section 11, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: Allthose opposed?

(No response)

Abstensions?

(No response)

Section 11 is adopted.

Delegate Moore.

DELEGATE J. MOORE: Section 12, Double Jeopardy --

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It hasn't been moved yet.

DELEGATE J. MOORE: Madam Chair, I move Section 12, Double Jeopardy.

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we adopt Section 12. Is there discussion? Yes, there is lots of discussion in this room, but we only want one person to discuss it at a time. Delegate Oulahan.

DELEGATE OULAHAN: Madam Chair, I move that Section 12 be amended by deleting all of the language after the word "offense" in line 7, so that the section remains, "No person shall be tried more than once for the same offense."

CHAIRPERSON FREEMAN: Is there a second to that amendment?

DELEGATE : Second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that in Section 12, we delete everything after the word "offense" in line 7. Is there discussion on that amendment?

DELEGATE OULAHAN: Madam Chair, I would merely brief and give up my right at the end because I think I can frame the issues for the body. The problem with this section is that the committee report does not really explain the

implications of the change in law which would occur if this section were adopted. In the District of Columbia, as in many states, common law definitions are used in connection with such crimes as murder, extortion, embezzelment and conspiracy. The reason for it is that the statutes set out the elements of the crime but then incorporates certain provisions from the common law which --

DELEGATE : That is the wrong section.

DELEGATE OULAHAN: Okay. I apologize to my fellow delegates.

CHAIRPERSON FREEMAN: Okay. Delegate Oulahan.

DELEGATE OULAHAN: In the District of Columbia, at the present time if you commit a crime which is either -- if you commit a crime which is a federal crime and then you commit at the same time a crime that is a state crime, you may be tried by the federal courts or the state courts. That is not double jeopardy because they are individual offenses. This is the practice throughout the United States.

Today I talked to the Office of the United States Attorney and they informed me that if this section is adopted, the results will be -- and I quote -- disaster because if, for example, a foreign espionage agent is captured and commits a murder of a bystander at the time he is captured, only one

jurisdiction can try him under this amendment. It will either be the state or the federal jurisdiction. As the law is today, he could be tried separately. Those separate trials today do not constitute double jeopardy. The use of the word here is wrong. I bring this up because I think you should have this background information to understand the serious nature of the change that is proposed and its effect on the ability of the state and federal governments to protect those of us who are law abiding. I encourage you to reject the proposed committee section.

CHAIRPERSON FREEMAN: Is there further discussion of the Oulahan amendment? Delegate Long.

DELEGATE LONG: Madam President --

CHAIRPERSON FREEMAN: Could we please have it quiet in this room? Delegate Long.

DELEGATE LONG: Madam President, I think that the distinction here turns on the interpretation of the phrase "same facts and circumstances." Now, is it the case that in the commission of a crime involving a second crime, one at the local level and one at the federal level, that prosecution at one level does involve the same facts and circumstances although the crime is different as a different set of facts and circumstances, therefore the prosecutor --

CHAIRPERSON FREEMAN: Can the committee answer the question, Delegate --

DELEGATE MARCUS: There will be one minute before we can answer because this is a highly technical jurisdictional question.

CHAIRPERSON FREEMAN: We will hear from Mr. Thomas first then and then we will listen to the committee. They are not yet ready. Can you comment on this?

Excuse me, delegates, it is very confusing. Could the committee please whisper, too.

DELEGATE JACKSON: Point of order.

CHAIRPERSON FREEMAN: Delegate Jackson.

(2-A)

DELEGATE JACKSON: Point of information.

DELEGATE CORN: If we were to leave the language like it is here written by the committee --

DELEGATE JACKSON: Out of order, Madam Chair.

CHAIRPERSON FREEMAN: She is not out of order.

DELEGATE JACKSON: Delegate Oulahan asked a question and the general counsel -- it is not fair to this convention. Every time we get something, some lawyer stands up and gives an opinion and that is nothing but his opinion and it is not fair to this body. Madam Chair, she is out of order.

CHAIRPERSON FREEMAN: Mr. Oulahan is not out of order. Delegate Oulahan has an amendment on the floor. Delegate Corn is addressing a question to the maker of the amendment. We have allowed that consistently throughout this convention.

DELEGATE JACKSON: (inaudible)

CHAIRPERSON FREEMAN: Delegate Jackson, I have ruled.

DELEGATE CORN: I would like to ask Delegate Oulahan --

CHAIRPERSON FREEMAN: Would the delegates please be quiet.

DELEGATE CORN: I would like to ask Delegate Oulahan if the same purpose that he has in mind would be effectuated by leaving the committee's language in place with one change, and that being in the last sentence, to say "A proceeding conducted under the jurisdiction of the United States shall not constitute a trial within this section."

DELEGATE OULAHAN: Madam Chair, I don't believe so because if I as a lawyer who has a client who was in a situation of the state murder and federal espionage statute situation, whichever one of those trials went first, I would immediately move to the second trial for my client within the

meaning of the D.C. Constitution was going to suffer double jeopardy. I don't think it is clear enough.

CHAIRPERSON FREEMAN: Delegate Kameny and then Delegate Eichhorn.

DELEGATE KAMENY: I would like to respond to Delegate Oulahan's question and I think Delegate Long -- I apologize to Delegate Long, I was conferring with our committee and I got a second hand version of your question. So I think I can respond to it. Despite what Delegate Oulahan said, Delegate Oulahan should know from his legal practice the sequence and order in which one does the things is very important. Yet under this, if the state prosecutes him and the federal government prosecutes him first, it may in fact preclude a state prosecution. If the state prosecutes him first, the state and the state constitution cannot bar the federal government and therefore the federal government can proceed as long as the federal prosecution is not barred by the federal Constitution and the interpretations thereof, therefore wise prosecutors, as wise foresighted prosecutors always do, will consult with each other and will decide the manner in which they wish to bring these multiple charges to court, and there will be no problem, and that covers other areas of multiple prosecutions which were raised to me in

private discussions last night as well. So in fact it does not preclude the kind of prosecutions for separate crimes at federal and state levels arising out of the same set of circumstances so that once again Delegate Oulahan's presentation represents a straw person.

There is no actual public means and that some change will have to be made in prosecutorial and legal procedure which Delegate Oulahan does not like to do, but it is not going to tear down our legal system, as he claims it will.

All it will mean is some minor amendments will be made, modifications in the manner in which multiple charge cases in multiple jurisdictions are prosecuted. That is all. I urge you to vote for the committee's proposal and against Delegate Oulahan's amendment which will have vicarated.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: (inaudible)

DELEGATE OULAHAN: Against an individual.

DELEGATE GARNER: Do you have any objection to adding that language?

DELEGATE OULAHAN: It says "no person," so it is already there.

CHAIRPERSON FREEMAN: Is there further discussion of the Oulahan amendment? Delegate Rothschild.

DELEGATE ROTHSCHILD: I would like to hear from our counsel on this.

CHAIRPERSON FREEMAN: Mr. Thomas, would you care to comment on this section?

MR. THOMAS: First of all, no doubt this section does extend the double jeopardy right than is now given.

DELEGATE ROTHSCHILD: (inaudible)

MR. THOMAS: Well, there are two points that I will go into right now, but first --

DELEGATE ROTHSCHILD: Read the report.

MR. THOMAS: The first would be that the proceeding conducted under the jurisdiction of the United States shall constitute a trial under this section. This brings forth the set of facts that Delegate Oulahan was referring to. I can't say that I am totally satisfied with the answer of Mr. Kameny, however.

I think Delegate Kameny says that if there is the situation in which federal crimes and state crimes, the way the prosecutor will deal with it is decide for himself or for the prosecutors to decide for themselves what charges to bring. But still under no circumstance can anyone be tried in a state court after they have been tried in a federal court, which is not the practice now.

The second problem is that, getting to Delegate Long's point, the same facts and circumstances, the phrase "the same facts and circumstances," Delegate Long, could you please restate the question so that -- it got lost somewhere in the response to Mr. Oulahan.

DELEGATE LONG: If there are two crimes committed in the same time period, one in federal and one in local, does that mean different facts and circumstances because there are two crimes or is the total context one set of facts and circumstances, they can be prosecuted in either of two ways. Let's say, for example, if they have somebody involved in espionage, which is a federal offense, and in the commission of the espionage act they also commit a murder, which is a crime against the District of Columbia. Because these two things are connected in that they just bring together, does that constitute one set of facts, or are the facts of the espionage different from the facts of the murder, which means that it is possible then to still prosecute both crimes, one in the state and one in federal? Or does this mean that these two acts --

MR. THOMAS: It sounds to me like it would not, and a second problem also with the section that I have is the phrase "actual and potential." Clearly, some crimes come

out in the course of one trial. In the course of trying someone for burglary, you may be having a trial and find out that it's very likely that the person may have committed a murder and it is from the same facts and circumstances, this language "actual and potential," I don't think a person could be tried later on for any later crime found out that a suspect committed during the same facts and circumstances.

DELEGATE LONG: (inaudible)

MR. THOMAS: But Delegate Kameny's answer was you amend the charges at the trial, as is often done. However, often also there is not enough evidence at the time of the trial and there is not enough time to develop the evidence, so those are three -- I have problems with the language after the first phrase, and I think the language is ambiguous and I think that the -- I just from a legal opinion think that the intent is not practical, the intent of the committee is not practical.

CHAIRPERSON FREEMAN: Okay. Delegate Marcus, you had your hand up.

DELEGATE MARCUS: Those delegates who have some trouble with this section should be happy to know that in fact at this point at least one delegate from the committee concedes the point that in fact there is some difficulty in

regard to the jurisdictional issue here. I think that principally what we are dealing with is jurisdictional issue. What we are trying to deal with on the state level is to make sure that there wasn't repeated trial after trial after trial after trial. The issue becomes, highlighted by Mr. Long's question, the issue becomes whether or not the federal government can in fact try individuals for crimes arising out of the same set of facts and circumstances. In this instance, then, I think that point was well made and I thank the general counsel for his point in that particular regard.

CHAIRPERSON FREEMAN: Thank you, Delegate Marcus.

Delegate Bruning.

DELEGATE BRUNING: I appreciate it that general counsel speaks right to it. I would add the word "not" on line 10 between "shall" and "constitute" so the section would read "proceedings conducted within the jurisdiction of the United States --

CHAIRPERSON FREEMAN: Delegate Bruning, you are out of order until we have dealt with the Oulahan amendment. Is this a substitute? Are you making a substitute motion, Delegate Bruning?

DELEGATE BRUNING: Yes, but it is --

CHAIRPERSON FREEMAN: I think it is out of order

until we have voted on the Oulahan amendment. Is there further discussion on the Oulahan amendment? Delegate Garner.

DELEGATE GARNER: I call for the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: The question has been called and seconded to close debate on the Oulahan amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Debate is now closed on the Oulahan amendment to Section 12, which would delete the rest of Section 12 after the word "offense" in line 7. All those in favor of the Oulahan amendment, please say "aye."

(A chorus of "aye.)

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: May we have a show of hands on that. All those in favor, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 17.

CHAIRPERSON FREEMAN: All those opposed, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 15.

CHAIRPERSON FREEMAN: Abstension?

(A show of hands.)

SECRETARY COOPER: Two.

CHAIRPERSON FREEMAN: The Oulahan amendment carries. Is there further discussion on Section 12?

DELEGATE : What was the final vote?

CHAIRPERSON FREEMAN: The vote was 17 in favor, 15 opposed, and 2 abstensions.

DELEGATE : How many delegates do we have present in the hall?

CHAIRPERSON FREEMAN: I think there were some delegates who didn't vote, but I called for the vote twice.

DELEGATE : I think we had better have a rollcall.

CHAIRPERSON FREEMAN: Are there floor delegates here who would like to have a rollcall on that vote?

(A chorus of "no.")

CHAIRPERSON FREEMAN: All right. I am going to repeat the issue. We will have a rollcall vote on this. May I have your attention please so you will know what you are voting on. I will tell you the issue. May I have quiet

please in this room. We are voting on the Oulahan amendment. The Oulahan amendment to Section 12 would delete the rest of Section 12 after the word "offense" on line 7, so that Section 12 would read as follows: "No person shall be tried more than once for the same offense."

Mr. Secretary, would you please read the roll. If you are in favor of this amendment, please say "aye" when you are called on; and if you are opposed, "no."

SECRETARY FREEMAN: Delegate Jordan.

DELEGATE JORDAN: Pass.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: No.

SECRETARY COOPER: Delegate Lockridge.

(No response)

SECRETARY COOPER: Delegate Long.

DELEGATE LONG: Yes.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: Yes.

SECRETARY COOPER: Delegate Maguire.

DELEGATE MAGUIRE: Yes.

SECRETARY COOPER: Delegate Marcus.

DELEGATE MARCUS: No.

SECRETARY COOPER: Delegate Charles Mason.

DELEGATE C. MASON: No.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE H. MASON: Pass.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE B. MOORE: No.

SECRETARY COOPER: Delegate Jerry Moore.

DELEGATE J. MOORE: No.

SECRETARY COOPER: Delegate Talmadge Moore.

DELEGATE T. MOORE: No.

SECRETARY COOPER: Delegate Nahikian.

(No response)

SECRETARY COOPER: Delegate Nixon.

(No response)

SECRETARY COOPER: Delegate Oulahan.

DELEGATE OULAHAN: Yes.

SECRETARY COOPER: Delegate Paramore.

DELEGATE PARAMORE: No.

SECRETARY COOPER: Delegate Robinson.

DELEGATE ROBINSON: Yes.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHSCHILD: Pass.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: Yes.

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SECRETARY COOPER: Delegate Shelton.

DELEGATE SHELTON: No.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: No.

SECRETARY COOPER: Delegate Street.

DELEGATE STREET: Yes.

SECRETARY COOPER: Delegate Terrell.

(No response)

SECRETATY COOPER: Delegate Thomas.

DELEGATE THOMAS: Yes.

SECRETARY COOPER: Delegate Warren.

DELEGATE WARREN: Yes.

SECRETARY COOPER: Delegate Baldwin.

DELEGATE BALDWIN: No.

SECRETARY COOPER: Delegate Barnes.

(No response)

SECRETARY COOPER: Delegate Blount.

DELEGATE BLOUNT: Yes.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: No.

SECRETARY COOPER: Delegate Clark.

(No response)

SECRETARY COOPER: Delegate Coates.

(No response)

SECRETARY COOPER: Delegate Cooper. Yes.

Delegate Corn.

DELEGATE CORN: Yes.

SECRETARY COOPER: Delegate Croft.

DELEGATE CROFT: No.

SECRETARY COOPER: Delegate Eichhorn.

DELEGATE EICHHORN: Yes.

SECRETARY COOPER: Delegate Feeley.

DELEGATE FEELEY: No.

SECRETARY COOPER: Delegate Freeman.

DELEGATE FREEMAN: No.

SECRETARY COOPER: Delegate Garner.

DELEGATE GARNER: Yes.

SECRETARY COOPER: Delegate Graham.

DELEGATE GRAHAM: No.

SECRETARY COOPER: Delegate Harris.

DELEGATE HARRIS: No.

SECRETARY COOPER: Delegate Holmes.

DELEGATE HOLMES: No.

SECRETARY COOPER: Delegate Jackson.

DELEGATE JACKSON: No.

SECRETARY COOPER: Delegate Johnson.

DELEGATE JOHNSON: Yes.

SECRETARY COOPER: Delegate Jones.

DELEGATE JONES: No.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Pass.

SECRETARY COOPER: You can only pass once.

DELEGATE JORDAN: I pass once.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: No.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE H. MASON: No.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes.

SECRETARY COOPER: Delegate Warren.

DELEGATE WARREN: No.

SECRETARY COOPER: Delegate Cassell.

(No response)

SECRETARY COOPER: Madam Chair, on the Oulahan amendment to Section 12, 15 in favor, 22 not in favor, and one abstension.

CHAIRPERSON FREEMAN: The Oulahan amendment is defeated.

Now, we have three amendments to the section. I

have an amendment from Delegate Bruning, I have one from Delegate Talmadge Moore and one from Delegate Cooper. Talmadge Moore had introduced his first, so I will call on him first. Delegate Moore.

DELEGATE T. MOORE: I believe this amendment will clear up some of the language contained in this article. On line 9 --

CHAIRPERSON FREEMAN: If people could hear it, it might help.

DELEGATE T. MOORE: I believe this --

CHAIRPERSON FREEMAN: Excuse me, Delegate Moore, I want quiet in this room.

Okay. Delegate Moore.

DELEGATE T. MOORE: I believe this amendment on double jeopardy on line 9 will clear up some of this language. So I am asking that you strike beginning on line 9, strike the beginning of the language at "a proceedings" and all of the remaining language contained on lines 10 and 11, and insert the following language in lieu of, "a person tried and convicted for an offense under the jurisdiction of the United States and subsequently tried for the same offense based on the same set of facts and circumstances under the jurisdiction of the state of (blank) shall constitute double jeopardy

under this section."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second it.

DELEGATE COOPER: Is that in writing?

CHAIRPERSON FREEMAN: Yes, I have it in writing, Delegate Cooper.

Is there discussion on that amendment? Delegate Jordan.

DELEGATE JORDAN: Madam President, I just have a question. I don't understand -- the way I heard the language, it permits the trial, if I understand the language correctly, in the state or subsequently -- he said that he can be tried in some other jurisdiction and would be tried here.

CHAIRPERSON FREEMAN: Delegate Moore?

DELEGATE T. MOORE: (inaudible)

DELEGATE JORDAN: Okay. I understand that, but that is not the way it was --

DELEGATE T. MOORE: Okay. "A person tried and convicted for an offense in any jurisdiction of the United States and subsequently tried for the same offense based on the same set of facts and circumstances under the jurisdiction of the state of (blank) shall constitute double jeopardy under this section."

DELEGATE KAMENY: Now that is a substitute for what language exactly?

DELEGATE T. MOORE: Line 9, Section 12, beginning "proceedings conducted under the jurisdiction of the United States."

CHAIRPERSON FREEMAN: Delegate Thomas.

DELEGATE THOMAS: Madam Chair, I have a problem when every time we bring up something Mr. Marcus has to consult with a lawyer back here. When we can't hear from our own attorney, how --

CHAIRPERSON FREEMAN: I think on almost every section tonight he has spoken to.

DELEGATE THOMAS: I think it is unfair for the committee to every time an issue comes up, he has to run back in the annex to consult --

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: Madam Chair, as is known, the counsel for this committee has not addressed this body once and has not given his legal opinion to this body once. My objection, sir, was that --

DELEGATE THOMAS: I have no problem with that.

DELEGATE JACKSON: Just let me finish, sir. I didn't say anything to you --

CHAIRPERSON FREEMAN: What is your point of order, Delegate Jackson?

DELEGATE THOMAS: I have no problem --

CHAIRPERSON FREEMAN: Delegate Thomas, you do not have the floor.

DELEGATE JACKSON: A point of information.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: It has nothing to do -- any citizen can come to this body for any reason they want, anybody from this body can go anywhere they want in this building. Thank you, Madam Chair.

CHAIRPERSON FREEMAN: Delegate Thomas, my ruling on your point of order to the extent for which you are asking for one, is that it is perfectly proper for a delegate to consult with anybody in this room, a delegate or non-delegate. I have called on our general counsel to speak whenever a delegate has asked for him to speak.

DELEGATE THOMAS: That is what he is being paid for.

CHAIRPERSON FREEMAN: I understand that. I am sure he would speak with affection.

Delegate Baldwin.

DELEGATE BALDWIN: I have alluded to this earlier, and I will say it again. I will speak right to the point.

There are several lawyers sitting out there and if what I say is wrong, I would like them to correct it. When a person commits an offense, it is either against the state, let's say the state of Virginia, or against the United States, as you have had an example.

The amendment as I understood it says that if a person commits an offense against the United States and also an offense against our new state, then that person can only be charged once. Now, I know why those lawyers sit out there, unlike Delegate Thomas, they are to help the lay people. As I understand it, as a lay person, either that offense is against the United States or it is against the state and you would not be tried anyway in both please, and it would seem to me that the lawyer would clear up things like this so that we can move on.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: I would like to associate myself with the remarks of Delegate Baldwin. I have a question, however, with regard to Delegate Moore's amendment. I believe that the language -- I think he left out a "not" because it means subsequently tried for the same offense. I think he means, since he is defining double jeopardy that they shall not be tried for the same offense twice, so I think the real

intent here is the definition. I think that we could easily share with him the word "not" so that it does in fact define it.

CHAIRPERSON FREEMAN: I think what he does at the end of his amendment is to say that all this shall constitute double jeopardy.

DELEGATE SIMMONS: By example as opposed to definition. Thank you.

CHAIRPERSON FREEMAN: Would the committee respond to the Talmadge Moore amendment.

DELEGATE MARCUS: First, the committee or at least this delegate on the committee would like to hear the Talmadge Moore amendment repeated because I think there is a simpler way to do what Mr. Moore wants.

CHAIRPERSON FREEMAN: I will read it one more time. It would replace -- there are two sentences right now in Section 12. The Talmadge Moore amendment would delete the second sentence and substitute for that the following words, "A person tried and convicted for an offense in any jurisdiction of the United States and subsequently tried for the same offense based on the same set of facts and circumstances under the jurisdiction of the state of (blank) shall constitute double jeopardy under this section."

Delegate Simmons.

DELEGATE SIMMONS: A point of information. Can the committee tell me if their intent was to prevent this from occurring rather than talking about after the fact that is what it is, then change it after the fact?

DELEGATE MARCUS: Yes, this -- may I respond?

CHAIRPERSON FREEMAN: I would like the committee to respond to this amendment.

DELEGATE MARCUS: That was the committee's intent. We didn't feel as if there was any need to add the phrase, the defininition that Delegate Moore added at the end of it. I spoke a little while ago about recognizing the jurisdictional issue that existed here, and I think that that probably is dealt with by the deletion of the last sentence.

CHAIRPERSON FREEMAN: Delegate Jerry Moore.

DELEGATE J. MOORE: Madam Chair, I find the language offered by Delegate Col. Moore acceptable. It fulfills the intent of the committee and I wanted to make that statement.

CHAIRPERSON FREEMAN: Thank you, Delegate Moore. Did everybody hear that? The amendment by Delegate Thomas Moore does fulfill the intent of the committee.

DELEGATE J. MOORE: I might say, with your permission, Madam Chair, that it would be subject to style and

drafting.

CHAIRPERSON FREEMAN: Thank you. Are we then ready to vote on the -- Delegate Barnes.

DELEGATE BARNES: I move the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on the Talmadge Moore amendment. All those in favor --

DELEGATE ROTHSCHILD: What are we voting on?

CHAIRPERSON FREEMAN: I will explain that, but right now we have a motion on the floor to close debate.

DELEGATE KAMENY: Madam Chair --

CHAIRPERSON FREEMAN: Is this a point of order, Delegate Kameny?

DELEGATE KAMENY: No, it is not. I ask your indulgence, if I may. I would like to raise a question and that is Delegate Moore said a person tried and convicted for an offense. The whole purpose of a double jeopardy is to prevent two trials, whether or not there is a conviction. Would you be amenable to deleting the two words "and convicted"?

CHAIRPERSON FREEMAN: Okay.

DELEGATE KAMENY: Thank you.

CHAIRPERSON FREEMAN: There is a motion on the floor to close debate on the Talmadge Moore amendment. All those in favor of closing debate, say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: The Talmadge Moore amendment would read as follows: In Section 12 we would delete the second sentence -- there are two sentences there -- and we would replace that sentence with the following: "A person tried for an offense in any jurisdiction of the United States and subsequently tried for the same offense based on the same set of facts and circumstances under the jurisdiction of the state of (blank) shall constitute double jeopardy under this section."

All of those in favor of adopting the Talmadge Moore amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstensions?

(No response)

CHAIRPERSON FREEMAN: The amendment carries.

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Delegate Bruning, did you have an amendment to make?

DELEGATE BRUNING: No.

CHAIRPERSON FREEMAN: Thank you. Delegate Cooper, did you have an amendment to make?

DELEGATE COOPER: My amendment would be to insert a comma before the period and insert "as provided by law."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : Yes, I second it.

DELEGATE COOPER: May I speak to it?

CHAIRPERSON FREEMAN: Yes, Delegate Cooper.

DELEGATE COOPER: I have a serious concern that often double jeopardy may very much be in order, and let me give you an example. If in the process of committing a murder a suspect also steals a getaway car that belongs to a private citizen and wrecks the getaway car, well then this person could only be tried -- if he were tried by the United States, he would only be tried possibly for the murder charge.

DELEGATE KAMENY: He can be charged --

CHAIRPERSON FREEMAN: Delegate Kameny, one person has the floor right now and that is Delegate Cooper.

DELEGATE COOPER: The way I understand it, he could only be -- he might possibly be tried on one charge. Now,

this I think would be quite contradictory to what we want to do as far as the protection of our citizens because the citizen who was the owner of that private automobile or vehicle could then gather no compensation from the state, and I think this is a serious flaw, if there is one.

DELEGATE KAMENY: May I respond?

CHAIRPERSON FREEMAN: Delegate Cooper's amendment, for those who did not hear, would be to add at the end of the section which we have now just recently amended with Talmadge Moore's amendment the following words "as provided by law."

Would the committee like to respond, as there was a second to that. Delegate Kameny, were you responding for the committee?

DELEGATE KAMENY: I am responding -- yes, to the substance of what I understand Delegate Cooper's amendment to be. Line 8 says simply "all charges" plural. Multiple counts in a trial are far from unknown and unless I misunderstand your point -- and perhaps I do -- that alone would seem to get at it. Is that correct?

DELEGATE COOPER: If that is the --

DELEGATE KAMENY: In other words, you don't have to have one trial for Charge A and a totally separate trial

for Charge B. Often you get an indictment this long, with fifty charges, or whatever it may be.

DELEGATE COOPER: My question was if he were to be let off from those charges, there would be sort of a miscarriage there.

CHAIRPERSON FREEMAN: Is there further discussion of the Cooper amendment? Delegate Bruning?

DELEGATE BRUNING: I call for the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on the Cooper amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is now closed on the Cooper amendment. The Cooper amendment would add the following words to the end of Section 12: "as provided by law," those words would be appended to the Talmadge Moore amendment. All those in favor of the Cooper amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstensions?

(No response)

CHAIRPERSON FREEMAN: The amended is defeated.

Is there further discussion on Section 12? Delegate Long.

DELEGATE LONG: The word "protection" there. Our general counsel raised a question as to what impact that would have. If I understand the intent of the committee, it is that the inclusion of that word is to prevent prosecutorial harassment by various kinds of excessive trials. However, we still haven't closed this question raised by the general counsel that if other things are discovered in the course of a trial, those things might escape prosecution, and I am not sure what to do now. There is a contradiction and I don't know where to do. I need further advice from general counsel as to whether that problem is cleared up or whether we need to address it.

CHAIRPERSON FREEMAN: Mr. Thomas?

MR. THOMAS: I merely raised the question. It is still a problem to me and I am not solely satisfied with the fact that the charges can be amended at trial. I am not totally satisfied with that answer. If the committee or if any one of the delegates want to deal with that by amendment,

it is up to the convention.

CHAIRPERSON FREEMAN: Does the committee have a response to that? First, I would ask the committee if it would choose to amend this. Delegate Marcus.

DELEGATE MARCUS: Mr. Counsel, it is my understanding that charges are frequently amended at the time of trial and that is a frequent occurrence and that in fact we are talking about very, very, very infrequent situations in which that might take place and that the issue of prosecutorial harassment may in fact outweight the chance of the amendment of the charges which persons currently are facing.

CHAIRPERSON FREEMAN: Thank you.

MR. THOMAS: Well, I think I have already responded to the amendment at trial question. As far as the -- I think you are right as to the infrequency of that happening. However the convention wants to deal with it, it is at their disposal. I just raise the question.

CHAIRPERSON FREEMAN: Is there further discussion on Section 12? Delegate Shelton, you had your hand up.

DELEGATE SHELTON: I pass. Thank you very much.

CHAIRPERSON FREEMAN: Delegate Bruning, you had your hand up.

DELEGATE BRUNING: I move the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: There is no amendment on the floor right now. Delegate Baldwin.

DELEGATE BALDWIN: I rise to a point of personal privilege. I will ask the general counsel a question through the Chair. This sentence reads, "The state shall try in a single trial all charges, actual and potential." Have you ever heard of a person being tried on a potential charge? That is different from an amendment to a charge. What is a potential charge? And in your practice have you ever heard of anyone being tried on a potential charge?

CHAIRPERSON FREEMAN: Mr. Thomas.

MR. THOMAS: I will answer the question this way. What the committee was trying to do in adding these words was to stop prosecutorial harassment, to save some charges and later afterwards bring other charges. My concern --

DELEGATE CROFT: Madam Chair, could you please instruct -- we cannot hear what is being said because of the private discussion going on.

CHAIRPERSON FREEMAN: Please be quiet and stop talking. Delegate Thomas -- excuse me, Mr. Thomas.

MR. THOMAS: I am concerned -- my concern is that some potential charges are not known at trial and even where

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they are known at trial, sometimes even after trial, this language would prevent such person from ever being charged again.

As to the question have I ever heard of anyone being tried on a potential charge, I guess I would have to answer no.

DELEGATE BALDWIN: Then we should strike "potential" before "charge."

CHAIRPERSON FREEMAN: Before we continue, I am going to ask the maker of the motion who called for the previous question to withdraw that. We seem to be engrossed in some further debate. Would the committee like to respond?

DELEGATE KAMENY: Yes. What we meant was it is possible to charge a person for a crime and if the prosecutor fails and doesn't get a conviction, then he tries the defendant on an attempt to commit the crime, which was a potential charge that existed to begin with but wasn't brought to start with, and if he fails that he may charge the defendant with conspiracy to commit the crime or an accessory to the crime, and on and on and on, harassment after harassment. These are all potential charges which lie in the background, the prosecutor has his choices to make at the beginning, let him make them but don't bring the person back for

a potential charge which exists to be made but was not made when you fail. That is what the intent of this was. It is clear and it was set out in the report.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I move the previous question.

DELEGATE BRUNING: I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on Section 12. All those in favor of closing debate, please say "aye."

(2-B)

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is now closed on Section 12. The question is on agreeing to Section 12 as amended. Need I read that again? All those in favor of adopting Section 12, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstensions?

(No response)

CHAIRPERSON FREEMAN: Section 12 is adopted.

Is the committee ready on Section 7?

Delegate Jerry Moore, are you still here?

We will proceed to Section 13. The committee is not yet ready on Section 7. Delegate Mason.

DELEGATE C. MASON: I move Section 13, No Bills of Attainder or Ex Post Facto Laws.

CHAIRMPERSON FREEMAN: Is there a second?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to adopt Section 13. Discussion? Delegate Cooper.

DELEGATE COOPER: I move the previous question.

DELEGATE BRUNING: I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on Section 13. All those in favor, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: That was mighty feeble, but I do believe that debate is closed. All those in favor of adopting Section 13 as it reads, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Abstensions?

(No response)

CHAIRPERSON FREEMAN: Section 13 is adopted.

Delegate Mason.

DELEGATE C. MASON: I move Section 14, Habeas Corpus.

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we adopt Section 14. Discussion? Delegate Oulahan.

DELEGATE OULAHAN: Madam Chair, I move that we substitute for the committee language the following language taken from Article I, Section 9, clause 2 of the federal Constitution: "The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

DELEGATE : I second it.

DELEGATE OULAHAN: Madam Chair, I have made --

CHAIRPERSON FREEMAN: Excuse me, was there a second to that?

DELEGATE : I second.

CHAIRPERSON FREEMAN: Thank you. Delegate Oulahan.

DELEGATE OULAHAN: I will be brief, Madam Chair.

I have made this amendment, Madam Chair, because the committee does not disclose for you the effect of their proposed amendment. The writ of habeas corpus is a writ that is only available for producing from jail a man or woman in custody. The writ of habeas corpus is not available to felons who may be out on parole or other persons who may be incarcerated. That is the first change that this section makes. It is completely contrary to law.

Secondly, the writ is available according to the committee under any and all circumstances. Since 1787 in the United States, the writ has never been available under all circumstances because under the situation that we have described in Article I of the Constitution, the situation will be such that the courts will be closed down and the writ itself cannot be carried out.

So I urge you to put into our constitution what has been established, used and has provided the necessary protections in the United States since 1787, the clause which I have read. Thank you.

CHAIRPERSON FREEMAN: Does the committee wish to respond to the substitute? Delegate Marcus.

DELEGATE MARCUS: I'm sorry, but it seems that Mr. Oulahan is incorrect in his technical explanation of the use

of the writ of habeas corpus. The use of the writ of habeas corpus is to challenge convictions that are unconstitutional or contrary to law. Convicted persons who have in fact served their time may still wish to challenge convictions which are in fact unconstitutional or contrary to law. They may in fact have a conviction and some time on their record which is the result of law which is the result of an unconstitutional action or contrary to law. The writ of habeas corpus would be used in that instance to challenge those particular convictions and relieve that person's record of having that conviction on it.

The second point is that Delegate Oulahan raises the issue of rebellion or time of war. Well, that is fine. In the case of rebellion or time of war, the supremacy clause would dictate what was happening in any instance anywhere in the United States anyway, and in fact the supremacy clause would be the clause that the people of this state would in fact be governed by, and therefore the language regarding time of war or rebellion is unnecesary.

In fact, what you do in that instance is that you turn over to the governor of this particular state the power to in fact close down the courts and deny habeas corpus. Thank you.

CHAIRPERSON FREEMAN: Delegate Street, you had your hand up.

DELEGATE STREET: Point of information. I wanted to know what the committee had in mind as to the limits in all cases.

CHAIRPERSON FREEMAN: Would the committee respond, please?

DELEGATE MARCUS: Okay. What the committee meant in this particular instance is that in fact an application for a writ of habeas corpus may be made more than once. There are different reasons why one might want to apply for a writ of habeas corpus because of somthing that may have taken place during the trial or the result of a particular conviction in fact. There may not be just one error in the trial, for example.

The second piece is that without limit refers to the standard of review applied to the review of the writ of habeas corpus. In other words, the standard of review should not be any higher than the standard of review which is applied to other sorts of writs which are applied for in the courts.

CHAIRPERSON FREEMAN: Delegate Street.

DELEGATE STREET: (inaudible)

CHAIRPERSON FREEMAN: Did the committee follow that question?

DELEGATE MARCUS: Right now, the Supreme Court has limited the time and the numbers of writ of habeas corpus that can in fact be applied for. The case of Frade v. The United States, for example, which was recently heard in the Supreme Court of the United States, rules that because a person applied for a writ of heabeas corpus some fifteen years essentially after the actual trial took place, that that person was unable to apply for, unable to challenge that particular conviction or the constitutionality of that conviction.

So in answer to your question, no, it does not in fact appear in other state constitutions. It isn't that new ground. It is new ground in the light of what the committee saw at least as being a challenge to the writ of habeas corpus by the Supreme Court of the United States, which we are in fact permitted to do.

DELEGATE STREET: Why are you putting it in our constitution?

DELEGATE MARCUS: The reason we are putting it in our constitution is in order to continue the protection of the writ of habeas corpus which, by the way, is a fundamental

right that people have had since essentially the Magna Carta.

CHAIRPERSON FREEMAN: I would remind delegates that what is on the floor right now is the Oulahan substitute motion which you will find in his package on page 27.

Delegate Robinson?

DELEGATE ROBINSON: Thank you. Madam Chair, I speak in favor of the Oulahan substitute amendment. Madam Chair, as I understand it, the writ of habeas corpus is the meaning of preventing a person from being jailed without just cause. Now, if we were to look at what is written here in this section, they are giving the writ of habeas corpus a degree of elasticity that it has not hostirically had.

It would seem to me that the extension that is written in this particular article would be contrary to the federal Constitution's writ of habeas corpus, produced by it, and I ask this body to vote in favor of the Oulahan amendment.

CHAIRPERSON FREEMAN: Delegate Talmadge Moore.

DELEGATE T. MOORE: From what Mr. Robinson just said, I was under the impression -- maybe I have the wrong definition -- that the writ of habeas corpus was to bring the person into court and take the time involved of arrest and if the charge was thought to be sufficient the person may be admitted to bail, and I am in agreement with Mr.

Robinson. It looks like to me that Section 14, the writ of habeas corpus would not be permitted and here it doesn't have much meaning.

CHAIRPERSON FREEMAN: Delegate Rothschild.

DELEGATE ROTHSCHILD: I would like to hear from our general counsel regarding the use of the writ and his opinion as to the difference between -- in other words, how frequently is it used and so forth.

MR. THOMAS: Okay. The oulahan amendment is used in 28 other state constitutions and the U.S. Constitution and the model constitution, and the more typical language you see in a writ of habeas corpus section. This section extends -- seeks to extend the right of habeas corpus, but I am right now a little confused as to some of the wording, and it seems that other people are also confused and that might be reason enough, that might be reason in itself to go with the normal language.

But what I would like to ask the committee, however, is what do you mean in the last phrase "whether or not the petitioner is in custody"? If that hasn't been explained already.

CHAIRPERSON FREEMAN: Could you explain again?

DELEGATE MARCUS: What we explained was that in not

every instance is a person who wishes to challenge a conviction as being unconstitutional or unlawful is in custody. In other words, a person may in fact have served their sentence and in fact wishes to challenge that particular sentence which they had received for that particular conviction or that particular procedure which they had undergone.

MR. ROTHSCHILD: Could they not appeal?

MR. MARCUS: They can appeal but in fact in order -- in fact there is no reason why they shouldn't be able to have a writ of habeas corpus in that regard.

I would also like to point out that the writ of habeas corpus has been used in child custody cases as well and in fact, you know, there is a need to recognize that particular approach.

CHAIRPERSON FREEMAN: Thank you. Mr. Rothschild.

DELEGATE ROTHSCHILD: Just a point of information. General counsel, I am confused as to how a writ of habeas corpus applies in that regard. Between the two of you, could you make it clear? I get lost. The writ of habeas corpus used to be producing a body. I lose something when I try to understand what it means regarding appeals after --

MR. THOMAS: Well, his point is that a writ of habeas corpus is fast. Why go through an appeal, why go

through a long stretched out appeal process when your writ of habeas corpus is there and available to you and it is available quickly.

CHAIRPERSON FREEMAN: Delegate Baldwin.

DELEGATE BALDWIN: What habeas corpus means, as most of us know, is to deliver the body. That is exactly what it means and it deals specifically with people who are supposed to be -- people who are in prison or detained. I rise to speak against the Oulahan amendment for two reasons.

Number one, if you note, he starts off with "a privilege," a privilege is something granted a person or persons and not granted others, so that differs from a right. That is the very first difference between his amendment and the committee. He wants it to be a privilege. He wants a writ to be a privilege and not a right and he further carries that on when he says "when in case of rebellion or invasion the public sector may be required," so he wants it to be a privilege to those people with the exception, and that is why he used privilege because he knew exactly what he was doing in his language.

So I speak against the Oulahan amendment and support the committee.

CHAIRPERSON FREEMAN: Thank you. Could Delegates

Eichhorn, Jordan, Thomas and Robinson -- I am not sure Robinson was part of that meeting -- conduct a meeting in the back of the room? Would you please conduct your meeting in the back of the room? Thank you.

Delegate Brian Moore.

DELEGATE B. MOORE: I heard several delegates give different definitions of writ of habeas corpus. Could the committee give us their definition?

CHAIRPERSON FREEMAN: Delegate Marcus or Delegate Jackson?

The committee has requested one of two things, and I will put it to you, delegates. The committee has either asked for a few minutes to write down the definition or for permission for their research assistant to speak it to you. Is it agreeable that we have the research assistant speak to this body?

Thank you. Madam Research Assistant.

MS. DUNGHAM: I can do a couple of things. First of all, I would like to read to you the definition of habeas corpus as found in Black's Law Dictionary and then I will explain what that means. Okay. Black's says, "Habeas corpus, known as the great writ and means literally you have the body. The writ of habeas corpus has a varied use

in criminal and civil contexts. It is basically a procedure for obtaining a judicial determination of the legality of an individual's custody. In the criminal context, it is used to bring a petitioner before the court to inquire into the legality of his confinement. The writ of federal habeas corpus is used to test the constitutionality of a state criminal conviction. It pierces through the formalities of a state conviction to determine whether the conviction is consonant with due process of law. The writ is used in the civil context to challenge the validity of child custody and deportations."

Basically, habeas corpus is used to test the constitutionality of a conviction that is contrary to the U.S. Constitution or state constitution or there are as well a couple of federal statutes that, although they are codified they are referred to as habeas corpus, does the same thing. Habeas is used where the conviction is contrary to law, not only the Constitution but also laws enacted by the legislature. And that is what it is for.

In a criminal context, generally what you have is a trial and then appeal and then if you do not prevail on your appeal then you can petition for habeas corpus, and this is the -- it is this petition, this writ that we are

trying to protect here by saying that it shall be available at all times here. If you don't mind, I can explain further. I mean I was one of the drafters of this language. We meant that there shall not be any time limit. In other words, if your conviction, if your criminal conviction was twenty years ago, you shall not be prevented from obtaining relief.

I must say that there is some movement by the Supreme Court in the direction of limiting habeas and also in the Congress under the two habeas statutes that I referred to earlier, to limiting the time to, for example, say a year or a couple of years after you have done your appeal, and by this language here at all times we are trying to prevent that.

Promptly, the word "promptly" means that the court shall review promptly and act promptly. It doesn't mean the court must make a decision within a week or two weeks. You know, we will leave that for interpretation later on, but "promptly" means that the court can't sit on it for an indeterminable length of time while the petitioner is awaiting word.

"Successively" means that the fact that one has petitioned for relief on one occasion will not deny that individual the right to petition on other occasions later on.

This would cover a situation, for example, where there may have been -- where the petitioner may have petitioned at one point, been denied relief and then there may be a change of law given retroactive application, where earlier the petitioner was not entitled to relief and later on, because of the change in law, this person would be afforded relief. By including the word "successively" we are insuring that that individual would not be denied relief.

Now, "without limit" means that the standard of review that the court uses in reviewing a petition would not be different. There would not be a higher standard of review than on appeal. And "unlawful detention, conviction or sentencing" means that the conviction, in other words, the procedures used at trial, the instructions given at trial may be unconstitutional -- excuse me, that is for conviction.

The word "detention" covers civil and criminal detention, and "sentencing," of course, covers those situations where the person may be convicted according to law but the sentence that has been imposed is contrary to law, and that person would be entitled to relief.

Thank you.

CHAIRPERSON FREEMAN: Thank you. Delegate Garner, do you still have a question or wish to debate this?

DELEGATE GARNER: No.

CHAIRPERSON FREEMAN: Delegate Long.

DELEGATE LONG: We are about half way through the Bill of Rights. It is clear that the committee in this document is breaking new ground. The only trouble is we have broken it in just about every section and I think we are breaking the back of the convention with the technicalities we are getting into. The legal interpretations are far beyond me and at this point I am ready to adopt the Bill of Rights of the U.S. Constitution --

DELEGATE KAMENY: No, no, no.

CHAIRPERSON FREEMAN: You are out of order, Delegate Kameny.

Delegate Barnes.

DELEGATE BARNES: I move the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: The motion on the floor is to close debate on the Oulahan substitute motion. Delegate Oulahan has spoken to it. Did you wish to add something to that?

DELEGATE OULAHAN: Yes.

CHAIRPERSON FREEMAN: Could you be brief because you have spoken.